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FILED
DISTRICT COURT OF GUAM

AUG 10 2005 *JP*

MARY L.M. MORAN
CLERK OF COURT

Attorney for Plaintiff

IN THE DISTRICT COURT OF GUAM

TERRITORY OF GUAM

FLORENCIA Q. LEWIS,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

) CIV. NO. 05-00026
)
) (Federal Tort Claims Act)
)
) COMPLAINT AND SUMMONS IN A
) CIVIL CASE
)
)
)
)
)

COMPLAINT

Plaintiff Florencia Q. Lewis ("Mrs. Lewis"), by and through her attorney, Wayson W. S. Wong, Esq., of the Law Offices of Wayson Wong, A Professional Corporation, as claims for relief against defendant United States of America ("Government"), alleges as follows.

A. INTRODUCTION

1. This Complaint is filed pursuant to the provisions of the Federal Tort Claims Act against the Government for injuries and damages sustained by Mrs. Lewis as a result of medical malpractice and/or negligence at Tripler Army Medical Center ("Tripler").

ORIGINAL

2. In August 2002, Mrs. Lewis flew from Guam to Hawaii for treatment at Tripler for hypertension. While there, she was diagnosed as having right-sided renal artery stenosis. On August 12, 2002, she underwent a right renal artery angiogram; but because of complications, she underwent a left brachial artery access (in her upper left arm) for selective stent placement and angioplasty of her right renal artery. Because of additional problems and/or complications during and/or following such procedures, she sustained permanent injuries to the nerves in her left arm and hand, substantial pain and disability, emotional distress and loss of enjoyment of life.

3. All administrative remedies have been exhausted, and Mrs. Lewis now seeks damages from the Government in this case.

B. JURISDICTION

4. This action arises under the Federal Tort Claims Act, 28 U.S.C. § 1346(b), 2671 *et seq.*

5. Mrs. Lewis is a citizen of Guam and currently resides in Guam.

6. The injuries suffered by her occurred in Honolulu, Hawaii and in Guam.

C. PARTIES

7. At all times relevant, Mrs. Lewis has been a resident of Guam.

8. The Government is and should be a named defendant pursuant to and under the provisions of the Federal Tort Claims Act, 28 U.S.C. § 1346(b), 2671 *et seq.*

9. At all times relevant, the physicians and other health care providers or one or more of them who caused Mrs. Lewis to be injured and damaged through his, her or their act(s) and/or omission(s) was or were employed by the Government and acting in the course and scope of such employment.

D. EXHAUSTION OF ADMINISTRATIVE REMEDIES

10. On August 10, 2004, pursuant to the provisions of the Federal Tort Claims Act, 28 U.S.C. § 1346(b), 2671 *et seq.*, Mrs. Lewis filed claims for personal injury against the Government within the statutory period as required by law.

11. Since the Government's acknowledgment of receipt of Mrs. Lewis' filed claims on August 10, 2004, it has failed to take final administrative action on them consisting of either a written denial or final settlement of them.

12. Therefore, pursuant to the provisions of the Federal Tort Claims Act, 28 U.S.C. § 1346(b), 2671 *et seq.*, this suit is timely filed after expiration of the six-month statutory period allowed for the administrative review of Mrs. Lewis' claims.

13. All administrative procedures have been exhausted, and the Complaint is timely filed.

E. FIRST CLAIM FOR RELIEF

14. Mrs. Lewis realleges paragraphs 1 – 13 of this Complaint.

15. The physicians and other health care providers or one or more of them at Tripler were negligent with respect to his, her or their act(s) and/or omission(s) in August 2002 that caused Mrs. Lewis to sustain the permanent injuries to the nerves in her left arm and hand, including but not limited to deviating from the applicable standard(s) of care.

16. Such negligence has been a legal cause of Mrs. Lewis' permanent injuries to the nerves in her left arm and hand and her past, present and probable future related special damages and general damages for her substantial pain and disability, emotional distress and loss of enjoyment of life.

17. The Government is vicariously liable to Mrs. Lewis for her injuries and related damages.

F. SECOND CLAIM FOR RELIEF

18. Mrs. Lewis realleges paragraphs 1 – 13 and 15 – 16 of this Complaint.

19. The physicians and other health care providers or one or more of them at Tripler failed to obtain Mrs. Lewis' informed consent to the procedure(s) that caused her permanent injuries to the nerves in her left arm and hand.

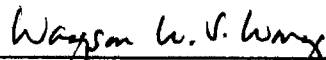
20. A reasonable person in Mrs. Lewis' circumstances would not have consented to the proposed procedure(s) had the required information been given to her.

21. That failure to obtain her informed consent has been a legal cause of her injuries and related damages.

22. The Government is vicariously liable to Mrs. Lewis for her injuries and related damages.

Accordingly, Mrs. Lewis requests that this Court give her judgment in her favor and against the Government for her special and general damages in an amount to be proven at trial, together with her costs and such other and further relief that this Court deems appropriate.

Dated: Hagatna, Guam, August 10, 2005.



Wayson W. S. Wong
Attorney for Plaintiff

Complaint and Summons in a Civil Case, Lewis v. United States of America, District Court of Guam, Civ. No.

CIVIL COVER SHEET

RECEIVED

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the District Court of Guam. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Florescia Q. Lewis

(b) County of Residence of First Listed Plaintiff Guam
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Wayson W. S. Wong, Esq., Law Offices of Wayson Wong
142 Seaton Blvd., Suite 203, Hagatna, Guam 96910
Ph.: 475-7448

DEFENDANTS

United States of America

DISTRICT COURT OF GUAM
HAGATNA, GUAM

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known) United States of America
c/o Leonardo M. Rapadas, Esq., Office of the
U.S. Attorney, Hernan Cortes Ave., Hagatna

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 PTF ☐ 1 DEF
- Citizen of Another State ☐ 2 PTF ☐ 2 DEF
- Citizen or Subject of a Foreign Country ☐ 3 PTF ☐ 3 DEF
- Incorporated or Principal Place of Business in This State ☐ 4 PTF ☐ 4 DEF
- Incorporated and Principal Place of Business in Another State ☐ 5 PTF ☐ 5 DEF
- Foreign Nation ☐ 6 PTF ☐ 6 DEF

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input checked="" type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless directed): Federal Tort Claims Act pursuant to 28 U.S.C. Sec. 1346(b), 2671 et seq.

Brief description of cause: Medical malpractice at Tripler Army Medical Center causing personal injuries and damages

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$
\$1,000,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE
8/10/05

SIGNATURE OF ATTORNEY OF RECORD

Wayson W. S. Wong

FILED
DISTRICT COURT OF GUAM

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

ORIGINAL

MARY L. MORAN
CLERK OF COURT

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.